



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2004

Ms. Rebecca Brewer
Abernathy Roeder Boyd Joplin, P.C.
P. O. Box 1210
Mckinney, Texas 75070-1210

OR2004-8697

Dear Ms. Brewer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211074.

The Frisco Police Department (the "department"), which you represent, received a request for a specified offense report. You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ Section 261.201 provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. See Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state that the submitted information relates to a report and investigation of alleged or suspected child abuse. We note, however, that section 261.201 does not apply to an investigation of child abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code. *See* Fam. Code § 261.201(h) (information used or developed in investigation of child abuse or neglect in facility regulated under chapter 42 of Human Resources Code generally not confidential under section 261.201 of Family Code). Pursuant to section 552.303(c) of the Government Code, we sent the department a notice requesting that it provide further information regarding the applicability of chapter 42 of the Human Resources Code to the submitted information. You have submitted your response and inform us that the business entity at which the alleged or suspected child abuse occurred is regulated under chapter 42 of the Human Resources Code. Accordingly, we conclude that because section 261.201 does not apply to the submitted information, none of it may be withheld under section 552.101 of the Government Code on that basis.

We note, however, that portions of the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with section 261.101 of the Family Code. Section 261.101 makes confidential the identity of a person reporting alleged or suspected child abuse or neglect in accordance with the reporting requirements of chapter 261. *See* Fam. Code § 261.101(a), (d). Because the department is an agency that is authorized to conduct an investigation under chapter 261, we find that the identifying information of the reporting party in this instance is confidential under section 261.101. *See* Fam. Code §§ 261.301, .401. Accordingly, we conclude that the department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 261.101 of the Family Code.

Next, we note that a social security number that is contained within the remaining submitted information may be excepted from disclosure pursuant to section 552.101 in conjunction with federal law. We note that the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that were obtained or are maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). The department has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Therefore, we have no basis for concluding that this social security number is confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing this social security number, the department should ensure that it was not obtained and is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we note that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the department must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code.

In summary, the department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 261.101 of the Family Code and section 552.130 of the Government Code. A social security number contained within the remaining submitted information may be confidential under federal law. The department must release the rest of the submitted information to the requestor.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

² We note that portions of the submitted information that must be released constitute information relating to the requestor's son that would normally be excepted from disclosure to the general public under laws and exceptions that are designed to protect privacy interests. However, as her son is the subject of this information, the requestor has a special right of access to the information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). We note, however, that if the department receives another request for this information from someone other than the requestor, the department should again seek our decision before releasing this information to that requestor.

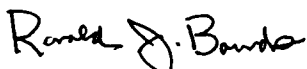
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 211074

Enc. Marked documents

c: Ms. Margaret Webb
11208 Newport Drive
Frisco, Texas 75035
(w/o enclosures)